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ORIGIN EB-06

INFO OCT-01 EUR-12 IO-10 ISO-00 /029 R

66607

DRAFTED BY: EB/OT/GCP:HCBLACK

APPROVED BY: EB/OT/GCP:DJDUNFORD

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O 071710Z NOV 74

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SENT GENEVA INFO BRASILIA MADRID FM SECSTATE NOV 05

QTE

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E.O. 11652: N/A

TAGS: GATT, ETRD, BR, SP

SUBJECT: GATT COMMITTEE ON TRADE AND DEVELOPMENT,
NOVEMBER 6

REFS: (A) GENEVA 06569, (B) STATE 219973,
(C) STATE 226810

1. IN RESPONSE TO REQUEST IN REFTEL (A) CONCERNING SENATE
FINANCE COMMITTEE VERSION OF TITLE V OF THE TRADE REFORM
ACT (TRA), USDEL MAY DRAW UPON, AS APPROPRIATE, DETAILED
INFORMATION CONTAINED IN REFTEL (B) AND PARAS 8 AND 11 OF
REFTEL (C). FURTHER CHANGES HAVE BEEN MADE IN SENATE
FINANCE COMMITTEE VERSION OF TITLE V SINCE DISPATCH OF
THESE TELEGRAMS:

(1) NATIONAL SECURITY EXAMPTION--ARTICLES SUBJECT TO
NATIONAL SECURITY ACTIONS WOULD BE EXCLUDED FROM
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PAGE 02 STATE 243666

PREFERENCES.

(2) SENSITIVE ARTICLES--FINANCE COMMITTEE AGREED NOT TO INCLUDE PROVISIONS WHICH WOULD HAVE EXPLICITLY EXCLUDED TEXTILES AND SHOES AND GIVEN THE TARIFF COMMISSION AUTHORITY TO DESIGNATE OTHER SENSITIVE ARTICLES FOR EXCLUSION. INSTEAD, THE SPECIAL TRADE REPRESENTATIVE WILL SUBMIT TO THE COMMITTEE A LETTER TO BE PUBLISHED IN THE COMMITTEE REPORT ON THE TRA, GIVING ASSURANCES THAT TEXTILES AND APPAREL PRODUCTS SUBJECT TO VOLUNTARY

TEXTILE AGREEMENTS, FOOTWEAR, WATCHES, CERTAIN STEEL PRODUCTS AND OTHER "SENSITIVE" ITEMS WOULD BE EXCLUDED FROM RECEIVING PREFERENCES.

(3) REDESIGNATION OF ELIGIBILITY FOR TARIFF PREFERENCES--FINANCE COMMITTEE AGREED TO CLARIFY PROCEDURE UNDER WHICH A COUNTRY DENIED ELIGIBILITY FOR PREFERENTIAL TREATMENT UNDER THE COMPETITIVE NEED FORMULA COULD BECOME ELIGIBLE FOR REDESIGNATION WHEN ITS IMPORTS DROPPED BELOW THE COMPETITIVE NEED LIMIT.

(4) ACCESS TO SUPPLIES--TITLE V WOULD BE MODIFIED TO INDICATE THAT COUNTRIES PARTY TO AGREEMENTS GUARANTEEING U.S. ACCESS TO SUPPLIES ESSENTIAL TO U.S. ECONOMIC REQUIREMENTS WOULD NOT BE DEEMED INELIGIBLE FOR TARIFF PREFERENCES UNDER PROVISIONS OF THE COMMITTEE VERSION WHICH EXCLUDE OPEC COUNTRIES AND OTHERS PARTICIPATING IN CERTAIN CARTEL-LIKE ARRANGEMENTS FROM PREFERENTIAL TREATMENT.

2. YOU MAY BE QUESTIONED BY OTHER DELS AS TO WHETHER BENEFICIARY COUNTRY PROVISIONS OF PROPOSED U.S. GSP SCHEME ARE CONSISTENT WITH NON-DISCRIMINATORY (AS BETWEEN DEVELOPING COUNTRIES) AND NON-RECIPROCAL CHARACTER OF GSP. U.S. DEL SHOULD NOTE THAT LEGISLATIVE AUTHORITY MAY BE CHANGED ON SENATE FLOOR OR IN CONFERENCE. THE ADMINISTRATION IS SEEKING TO HAVE THE MANDATORY BENEFICIARY AMENDMENTS PROPOSED BY SENATE FINANCE COMMITTEE MODIFIED OR DELETED.

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PAGE 03 STATE 243666

3. IN RESPONSE TO REQUEST IN REFTTEL USDEL MAY DRAW ON FOLLOWING INFORMATION ON COUNTERVAILING DUTY ACTIONS ON BRAZIL AND SPAIN IN RESPONDING AS CONSIDERED APPROPRIATE TO BRAZILIAN STATEMENT IN GATT COUNCIL:

4. BACKGROUND - BRAZIL: AMERICAN FOOTWEAR INDUSTRIES ASSOCIATION FILED COMPLAINT WITH TREASURY JULY 1973 ALLEGING BRAZILIAN FOOTWEAR EXPORTERS RECEIVING BOUNTIES

OR GRANTS. FOLLOWING UNSUCCESSFUL ATTEMPTS BY U.S. TO PERSUADE GOB TO ENGAGE IN SUBSTANTIVE DISCUSSIONS ON ISSUE, A PROCEEDING NOTICE ANNOUNCING OPENING OF FORMAL INVESTIGATION WAS PUBLISHED ON MARCH 8, 1974. INTENSIVE TECHNICAL DISCUSSIONS WERE HELD IN BRASILIA AND WASHINGTON. INVESTIGATION REVEALED EXISTENCE OF COMPLEX SYSTEM OF SUBSIDIES, WITH BOUNTIES OR GRANTS VARYING FROM FIRM TO FIRM. ON SEPTEMBER 11, 1974, TREASURY ANNOUNCED IMPOSITION OF COUNTERVAILING DUTIES ON BRAZILIAN FOOTWEAR.

5. SPAIN: ON SEPTEMBER 11 TREASURY ANNOUNCED IMPOSITION OF COUNTERVAILING DUTIES ON BOTTLED GREEN OLIVES (2.9 PERCENT) AND NON-RUBBER FOOTWEAR (3 PERCENT) IMPORTED FROM SPAIN. INFORMAL INVESTIGATION OF COMPLAINT WAS INITIATED JUNE 1973 AND BOUNTIES OR GRANTS FOUND TO EXIST. SPAIN WAS GIVEN OPPORTUNITY TO REDUCE TAX REBATES TO EXPORTERS BUT WHEN GOS DID NOT ACT, TREASURY ANNOUNCED OPENING OF FORMAL INVESTIGATION ON JULY 16 AND IMPOSED DUTIES IN SEPTEMBER.

6. OBSERVATIONS:

A) USG AWARE THAT ACTIONS UNDER COUNTERVAILING DUTY LEGISLATION SOURCE OF LEGITIMATE CONCERN TO BRAZIL AND, INSOFAR AS LEGALLY POSSIBLE, HAS GIVEN FULL AND SYMPATHETIC CONSIDERATION TO THIS CONCERN. BRAZILIAN GOVERNMENT WAS OFFERED AMPLE OPPORTUNITY FOR CONSULTATION DURING ALL PHASES OF INVESTIGATION. A SPECIAL SYSTEM OF MULTIPLE RATES WAS IMPOSED TO PROVIDE THE MAXIMUM DEGREE OF LIBERAL TREATMENT OF BRAZILIAN EXPORTERS CONSISTENT WITH U.S. LAW. DUTIES IMPOSED ARE AS LOW AS 3.5 PERCENT WITH APPROXIMATELY 75 PERCENT OF FOOTWEAR SHIPMENTS BEING ASSESSED AT A MAXIMUM RATE OF 4.8 PERCENT LIMITED OFFICIAL USE

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PAGE 04 STATE 243666

CENT.

B) U.S. LEGISLATION REGARDING COUNTERVAILING DUTIES IS MANDATORY, LEAVING SECRETARY OF THE TREASURY NO DISCRETION TO REFRAIN FROM IMPOSING DUTIES IF INVESTIGATION CONFIRMS THAT BOUNTY OR GRANT EXISTS.

C) USG RECOGNIZES THAT THERE IS SOME DISAGREEMENT AS TO NATURE OF RIGHTS AND OBLIGATIONS OF CONTRACTING PARTIES OF GATT CONCERNING SUBSIDIES AND COUNTERVAILING DUTIES. IT IS CLEAR, HOWEVER, THAT UNDER PROTOCOL OF PROVISIONAL APPLICATION U.S. EXEMPTED FROM INJURY REQUIREMENT EXPRESSED IN ARTICLE 6(A) OF THE GATT.

D) ON QUESTION OF DIFFERENTIATED TREATMENT FOR LDC'S

THERE ARE NO STATUTORY GROUNDS UNDER WHICH U.S. COULD ACCORD PREFERENTIAL TREATMENT IN SOME CASES AND MORE STRICT APPLICATION IN OTHERS. GATT ARTICLE XXXVII.1 SPECIFICALLY STATES THAT DEVELOPED COUNTRIES SHALL GIVE EFFECT TO ITS PROVISIONS "TO THE FULLEST EXTENT POSSIBLE---THAT IS, EXCEPT WHEN COMPELLING REASONS, WHICH MAY INCLUDE LEGAL REASONS, MAKE IT IMPOSSIBLE". NEVERTHELESS, USG DOES APPRECIATE SPECIAL NEEDS OF DEVELOPING COUNTRIES. U.S. HAS INDICATED WILLINGNESS IN GATT TO EXPLORE POSSIBILITY OF NEW AND COMPREHENSIVE RULES ON SUBSIDIES AND COUNTERVAILING DUTIES AND IN THAT CONTEXT TO DISCUSS DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES. THE U.S. HAS WELCOMED THE INITIATIVE OF BRAZIL ON THESE MATTERS IN RECENT MEETINGS OF TNC GROUP 3(B). WHEN INTERNATIONAL AGREEMENT IS REACHED ON THESE ISSUES, THE USG WOULD BE PREPARED TO SEEK CHANGES IN U.S. LEGISLATION.

7. OTHER INSTRUCTION RE CTD MEETING SENT SEPTTEL. INGERSOLL UNQTE INGERSOLL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ECONOMIC DEVELOPMENT, TRADE, COMMITTEES
Control Number: n/a
Copy: SINGLE
Draft Date: 07 NOV 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE243666
Document Source: CORE
Document Unique ID: 00
Drafter: EB/OT/GCP:HCBLACK
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740321-0098
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741162/aaaacaxg.tel
Line Count: 189
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: (A) GENEVA 06569, (B) STATE 219973
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 03 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 APR 2002 by martinml>; APPROVED <08-Aug-2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: GATT COMMITTEE ON TRADE AND DEVELOPMENT, NOVEMBER 6
TAGS: ETRD, BR, SP, GATT
To: USUN NEW YORK EC BRUSSELS
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005